



Billing Code: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2012-N184]

[FXES11120200000F2-123-FF02ENEH00]

Draft Environmental Assessment and Draft Habitat Conservation Plan for TransCanada Keystone Pipeline's Gulf Coast Project in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft Environmental Assessment and draft Habitat Conservation Plan for TransCanada Keystone Pipeline's (Keystone) Gulf Coast Project in Oklahoma, under the National Environmental Policy Act of 1969. Keystone has applied for an incidental take permit under the Endangered Species Act, that would authorize incidental take of the American burying beetle.

DATES: To ensure consideration of your written comments, we must receive them on or before close of business (4:30 p.m. CST) on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To obtain documents for review, see **Reviewing Documents** in **SUPPLEMENTARY INFORMATION**.

Comments concerning the application, the draft Environmental Assessment (DEA), or the draft Habitat Conservation Plan (DHCP) should be submitted in writing, by one of the following methods:

Email: Keystone_HCP_OK@fws.gov; or

U.S. mail: Field Supervisor, Oklahoma Ecological Services Field Office, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Please refer to Permit number TE80492A-0 when submitting comments.

Please specify if comments are in reference to the DEA, DHCP, or both.

FOR FURTHER INFORMATION CONTACT: Dr. Dixie Porter, at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 E. 21st St., Tulsa, OK 74129, or by phone at 918-581-7458.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (NEPA), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the DEA related to the potential issuance of an incidental take permit (ITP) to TransCanada Keystone Pipeline, LP (applicant, Keystone); and

2. The applicant has developed a DHCP as part of the application for an ITP (TE80492A-0), which describes the measures Keystone has agreed to undertake to minimize and mitigate the effects of incidental take of the federally listed American burying beetle (*Nicrophorus americanus*; ABB) to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested ITP, which would be in effect for a period of 50 years if granted, would authorize incidental take of the ABB (covered species) resulting from activities associated with construction, maintenance, operation, and repair (both routine and emergency) of Keystone's Gulf Coast Project and associated activities (covered activities). As described in the DHCP, the proposed incidental take would occur within the ABB's range in Oklahoma as identified by the Service, which includes portions of Creek, Okfuskee, Seminole, Hughes, Coal, Atoka, and Bryan Counties, Oklahoma (permit area). The DEA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that would be implemented to minimize and mitigate such impacts to the maximum extent practicable.

Background

The Keystone XL Pipeline Project was previously proposed by TransCanada, with a request for a Presidential Permit. The U.S. Department of State (DOS) published a

notice of intent (NOI) to prepare an environmental impact statement in the Federal Register on January 28, 2009 (74 FR 5019), and public scoping meetings were conducted in connection with the applicant's requested Presidential Permit. The proposed Keystone XL Pipeline Project extended from Canada to the Gulf Coast. A draft environmental impact statement was prepared by the DOS [EIS No. 20110290, Final EIS, DOS] for the Keystone XL Pipeline Project. The Environmental Protection Agency (EPA) published a notice of availability of the Draft Environmental Impact Statement on April 20, 2010 (75 FR 51458). On August 26, 2011, the DOS published a notice of availability (76 FR 53525) of the final EIS and announced public meetings to solicit comments for the Secretary of State's (or her designee) consideration of the Keystone XL Pipeline with a notice that no decision would be made until the completion of a thorough review process. The EPA published its notice of availability of the final EIS in the Federal Register on September 2, 2011 (76 FR 54767). A Presidential Memorandum dated February 1, 2012, directed the Department of State to issue a denial of the Keystone XL Pipeline Presidential Permit application (77 FR 5614; February 3, 2012).

Keystone continued to develop the Gulf Coast portion of the project, including working with the Service towards the development of an HCP for the ABB. The Gulf Coast Project in this HCP follows the same route as the previously proposed Keystone XL's Gulf Coast Segment. Because the majority of impacts were previously analyzed in the final EIS developed for the Keystone XL pipeline project, a DEA, that includes the analysis from that EIS by reference, has been prepared in response to the application for an ITP for the ABB.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for incidental take of the ABB associated with the construction, maintenance, operation, and repair of the pipeline and associated facilities occurring within the permit area. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its DHCP, which describes the conservation measures TransCanada has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the covered species to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of the ABB in the wild.

Other Alternatives Considered

Our proposed action is approving the applicant's DHCP and issuance of an ITP for take associated with the applicant's covered activities. As required by NEPA, the DEA considers the consequences to the human environment of the proposed HCP and two alternatives; the No Action Alternative and a Reduced Permit Duration Alternative. Under the No Action Alternative, Keystone would not apply for and we would not issue an ITP. The No-Action Alternative does not meet Keystone's need for take authorization and would not provide any conservation benefits for the ABB.

Under the Reduced Permit Duration Alternative, the applicant would employ the same avoidance and minimization measures described under the Proposed Alternative, but they would pursue an ITP only for construction and restoration activities, not to exceed 5 years. This alternative would not meet Keystone's need for

incidental take authorization for operation and maintenance activities post-construction. Additionally, this alternative provides less conservation benefit for the covered species than would the Proposed Action.

Reviewing Documents

You may obtain copies of the DEA and DHCP on the Service's Web site at [*http://www.fws.gov/southwest/es/Oklahoma/*](http://www.fws.gov/southwest/es/Oklahoma/).

Alternatively, you may obtain CD-ROMs with electronic copies of these documents by writing to Dr. Dixie Porter, Field Supervisor, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129; calling 918-581-7458; or faxing 918-581-7467. A limited number of printed copies of the DEA and DHCP are also available, by request, from Dr. Porter. Copies of the DEA and DHCP are also available for public inspection and review by appointment only, during normal business hours (8 a.m. to 4:30 p.m. CST) at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240;
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102; and
- U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Persons wishing to review the Keystone XL Pipeline Project final EIS may obtain a copy from the Department of State's Web site at: http://keystonepipeline-xl.state.gov/archive/dos_docs/feis/index.htm.

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos
Acting Regional Director,
Southwest Region,
Albuquerque, New Mexico.

~~{FR Doc. 2012-20349 Filed 08/16/2012 at 8:45 am; Publication Date: 08/17/2012}~~